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AZ CORP COMMISSION
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COMMISSIONERS

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF
FINANCING TO INSTALL A WATER LINE
FROM THE WELL ON TIEMAN TO WELL
NO. 1 ON TOWERS.

Docket No. W-04254A-12-0204

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF
FINANCING TO PURCHASE THE WELL
NO. 4 SITE AND THE COMPANY
VEHICLE.

Docket No. W-04254A-12-0205

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF
FINANCING FOR AN 8,000-GALLON
HYDRO-PNEUMATIC TANK.

Docket No. W-04254A-12-0206

IN THE MATTER OF THE RATE
APPLICATION OF MONTEZUMA
RIMROCK WATER COMPANY, LLC.

Docket No. W-04254A-12-0207

JOHN E. DOUGHERTY,

COMPLAINANT,

Docket No. W-04254A-11-0323

V.

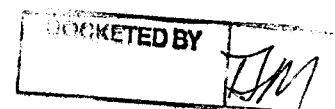
MONTEZUMA RIMROCK WATER
COMPANY, LLC

RESPONDENT

Arizona Corporation Commission

DOCKETED

MAY 15 2013



1 IN THE MATTER OF THE APPLICATION
2 OF MONTEZUMA RIMROCK WATER
3 COMPANY, LLC FOR APPROVAL OF A
4 RATE INCREASE.

Docket No. W-04254A -08-0361

5 IN THE MATTER OF THE APPLICATION
6 OF MONTEZUMA RIMROCK WATER
7 COMPANY, LLC FOR APPROVAL OF A
8 FINANCING APPLICATION.

Docket No. W-04254A -08-0362

**RESPONSE TO STATEMENT OF
FACTS**

9 Montezuma Rimrock Water Company files the following response to the statement
10 of facts submitted by Mr. Dougherty in support of his motion for partial summary
11 judgment.

12 Paragraphs 1-5 of Mr. Dougherty's statement of facts are not factual allegations.
13 Rather, they are restatements of various orders and filings in the consolidated dockets in
14 this case. Those orders and filings speak for themselves. MRWC responds to the factual
15 allegations contained in paragraphs 6-16 of Mr. Dougherty's statement of facts below.

16 6. Originally, Ms. Olsen was provided with two versions of the lease
17 agreement—two leases for her personal signature and one for the Company. Those leases
18 are attached as Exhibits 1 and 2 to Mr. Dougherty's statement of facts. MRWC did not
19 draft those lease documents—rather they were provided by Odyssey Financial. The Nile
20 River lease is not a contract document or form created by MRWC. Those documents
21 were provided by Odyssey Financial to MRWC and Ms. Olsen. The March 22, 2012
22 lease signed by Mr. Torbenson is the actual agreement between MRWC and Nile River.
23 Ms. Olsen was originally provided with an undated lease agreement to MRWC, which
24 was signed by Ms. Olsen. Subsequently, Ms. Olsen spoke with a representative of
25 Financial Pacific and was advised that it would take 30-60 days to finalize the agreement.
26 As a result, Financial Pacific provided MRWC with two copies of the lease agreements
dated April 2, 2012 and May 2, 2012. Representatives of Financial Pacific advised Ms.
Olsen that the agreement could be dated in April or May. At the time, MRWC focused on
getting the financing in place for the arsenic treatment plant. For these reasons, MRWC

1 considered the May 2012 Financial Pacific lease as the final agreement. Olsen Decl. at ¶¶
2 1-15.

3 7. MRWC denies the allegations contained in ¶ 7 of Mr. Dougherty's
4 statement of facts. MRWC docketed copies of those lease agreements in October 2012 in
5 Docket No. 12-0204 and filed an application seeking approval of those lease agreements
6 in April 2013.

7 8. Paragraph 8 of Mr. Dougherty's statement of facts does not include any
8 factual allegations. Rather, Mr. Dougherty's restates GAAP standards for leases.
9 MRWC asserts that the applicable GAAP standards speak of themselves.

10 9. MRWC acknowledges that the Nile River lease agreement is a capital lease
11 based on Rider 2. Unfortunately, MRWC did not have a copy of Rider 2 in its files. In
12 any event, the Company submitted the March 22, 2012 Nile River lease agreement for
13 Commission approval in its Notice of Filing Financing Applications on April 12, 2013.
14 MRWC also docketed that lease agreement and the May 2, 2012 lease agreement with
15 Financial Pacific with the Commission on October 26, 2012 in Docket No. 12-0204.

16 10. MRWC acknowledges that the Financial Pacific lease agreement is a capital
17 lease. The Company submitted that lease agreement for Commission approval in its
18 Notice of Filing Financing Applications on April 12, 2013. MRWC also docketed that
19 lease agreement with the Commission on October 26, 2012 in Docket No. 12-0204.

20 11. See response to ¶ 9 above.

21 12. MRWC denies the allegations contained in ¶ 12 of Mr. Dougherty's
22 statement of facts. The May 2 and April 2 lease agreements contain the same terms and
23 conditions for the lease agreement. As a result, there is no fraud relating to any material
24 terms or conditions of the lease. The fact that one lease is dated a month after the other
25 lease does not equate with fraud. Both of those lease agreements were provided to
26 MRWC and Ms. Olsen by Financial Pacific. Originally, an undated lease agreement was

1 provided to MRWC, which was signed by Ms. Olsen. Subsequently, Ms. Olsen spoke
2 with a representative of Financial Pacific and was advised that it would take 30-60 days to
3 finalize the agreement. As a result, Financial Pacific provided MRWC with two copies of
4 the lease agreements dated April 2, 2012 and May 2, 2012. Representatives of Financial
5 Pacific advised Ms. Olsen that the agreement could be dated in April or May. Olsen Decl.
6 at ¶¶ 1-15.

7 13. MRWC does not know who signed the March 16, 2012 lease agreement for
8 Nile River and MRWC believed it was an authorized signature of Nile River. The March
9 22, 2012 lease signed by Mr. Torbenson is the actual agreement between MRWC and Nile
10 River. Olsen Decl. at ¶¶ 1-15. It also should be noted that the affidavits of Mr.
11 Torbenson and Mr. Richards may not be admissible at hearing without authentication,
12 foundation and the right of cross examination.

13 14. See response to ¶ 13 above.

14 15. Mr. Dougherty's misstates the March 21, 2013 letter from counsel for
15 Financial Pacific in ¶ 15. See response to ¶ 12 above. It also should be noted that the
16 March 21, 2013 letter from Financial Pacific's legal department is not admissible without
17 authentication, foundation and the right of cross examination. Further, the May 2 and
18 April 2 lease agreements contain the same terms and conditions for the lease agreement.
19 Both of those lease agreements were provided to MRWC and Ms. Olsen by Financial
20 Pacific. Whether the lease is dated May 2, 2012 or April 2, 2021 does not impact the
21 terms and conditions of the lease.

22 16. MRWC does not dispute ¶ 16.

23 ...

24 ...

25 ...

26 ...

1 RESPECTFULLY SUBMITTED this 15th day of May, 2013.

2 FENNEMORE CRAIG

3
4 By 

5 Todd C. Wiley
6 2394 E. Camelback Road, Suite 600
7 Phoenix, Arizona 85016
8 Attorneys for Montezuma Rimrock Water
9 Company, LLC.

10 An original and 13 copies
11 of the foregoing was filed
12 this 15th day of May, 2013,
13 with:

14 Docket Control
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007


18 A copy of the foregoing
19 was hand delivered/mailed/emailed this
20 15th day of May, 2013, to:

21 Sarah N. Harpring
22 Administrative Law Judge
23 Arizona Corporation Commission
24 1200 W. Washington
25 Phoenix, Arizona 85007

26 Charles Hains
 Wes Van Cleve
 Legal Division
 Arizona Corporation Commission
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 Steve Olea
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